

Charles W. Hingle, #1947
Shane P. Coleman, #3417
Jason S. Ritchie, #7442
HOLLAND & HART LLP
401 North 31st Street
Suite 1500
P.O. Box 639
Billings, Montana 59103-0639
Telephone: (406) 252-2166
Fax: (406) 252-1669

Attorneys for Hyundai Motor Finance Co.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MONTANA

INCREDIBLE AUTO SALES, LLC,)	Bankruptcy No.06-60855-RBK
)	
Debtor.)	
)	

**HMFC'S MOTION FOR ENTRY OF
ORDER ALLOWING USE OF CASH COLLATERAL**

Hyundai Motor Finance Company ("HMFC") hereby moves this Court for an Order allowing the Debtor to use cash collateral in the form provided on the proposed Order attached hereto as Exhibit 1.

This matter comes before the Court on cross-motions filed by the parties. The Debtor, Incredible Auto Sales LLC, has filed an "Emergency Motion as to Use Cash Collateral Pursuant to 11 U.S.C. § 363 of the Bankruptcy Code and as to Offer of Adequate Protection to Hyundai Motor Finance Company." Objections to Debtor's Motion were filed by Hyundai Motor Finance Company ("HMFC"), Manheim Services Corporation, dba South Seattle Auto Auction, Auto Auction Associates of Montana, Inc., and Steve's Auto Sales, Inc. HMFC has filed an "Emergency Motion to Prohibit or Condition Use, Sale or Lease of Inventory and/or Cash

Collateral.” Objections to HMFC’s Motion were filed by Debtor and Auto Auction Associates of Montana, Inc. On November 6-7, the Court held a hearing and took testimony on these Motions. During the hearing, the parties agreed to terms and conditions under which the Debtor would be permitted to use cash collateral for a 45-day period.

By Order dated November 7, 2006, the Court required that the parties reduce their agreement to a written stipulation to be filed with the Court no later than Monday, November 13, 2006. The Court further ordered that the Debtor be permitted to “use up to \$35,000.00 to pay its payroll obligations and \$6,000.00 to pay its present insurance obligations.” Until such time as the Court enters an Order approving the parties’ Stipulation or otherwise permitting use of cash collateral, this Court’s Order dated November 1, 2006, remains in effect. The November 1 Order requires that “Debtor shall, until further order of this Court, deposit the proceeds of the sales of all inventory of new and used motor vehicles and parts in trust accounts established at Stockman Bank.” The November 1 Order also gives HMFC access to the Debtor’s place of business.

Despite their agreement to terms during the November 7 hearing, the parties have been unable to reach agreement on a written stipulation for implementing those terms. Debtor has failed to negotiate the written terms in good faith. Debtor’s initial draft of a Stipulation as well as the draft provided to HMFC’s counsel Saturday failed to include even the most basic agreed upon terms, such as HMFC’s replacement lien in Debtor’s proposed new motor vehicle inventory or even a budget for use of cash collateral. HMFC has noted these patent deficiencies to Debtor’s counsel, but Debtor has failed or refused to make even the most basic changes. HMFC presented Debtor with a comprehensive Stipulation that would govern the handling of cash collateral and replacement inventory, which draft included features suggested by Debtor. In particular, proposed Exhibits A and B to the Proposed Order, establishing procedures for use of

trust accounts and for handling replacement collateral, were obtained from Debtor's motion and from Debtor's local counsel, respectively. Debtor has failed or refused to respond in any meaningful way.

The Court's Order required the parties to file a Stipulation by Monday, November 13. Counsel for HMFC has attempted to negotiate with Debtor's counsel, Mr. Needler, over the weekend without success. HMFC has been informed and believes that Mr. Needler is traveling and will not be available until the Court's hearing on November 14 related to Debtor's Emergency Motion to Extend Deadlines for Filing Initial U.S. Trustee Reports – after the Court's deadline. Accordingly, the parties were unable to meet this Court's deadline of November 13 for filing a Stipulation for implementing the terms of the cash collateral agreement reached last week in Court.

In view of the parties' disagreement about the details of the cash collateral stipulation and in view of Debtor's unwillingness to negotiate in good faith or even to be available to discuss the mechanics of implementing this Stipulation, HMFC submits herewith a proposed Order. The proposed Order implements the terms that the parties agreed upon in open court last week. The detailed procedures for using cash collateral and for tracking replacement inventory come almost entirely from Debtor's proposals.

DATED this 13th day of November, 2006.

/s/ Shane P. Coleman

Charles W. Hingle, #1947

Shane P. Coleman, #3417

Jason S. Ritchie, #7442

HOLLAND & HART LLP

401 North 31st Street Suite 1500

P.O. Box 639

Billings, Montana 59103-0639

ATTORNEYS FOR HYUNDAI MOTOR
FINANCE CO.

NOTICE TO DEBTOR AND INTERESTED PARTIES

If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time, and location of the hearing can be obtained from the Clerk of Court or from the Court's website at www.mtb.uscourts.gov. In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2006, I served a true and correct copy of the foregoing, addressed as follows and by the method shown below:

William L. Needler
P.O. Box 177
Fuller Building Suite H
2 North Spruce Street
Ogallala NE 69153
williamlneedler@aol.com

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

Clarke B. Rice
Clark B. Rice, P.C.
2951 King Avenue West
Billings, MT 59102

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

Office of the U.S. Trustee
U.S. Trustee's Office
Liberty Center Suite 204
301 Central Avenue
Great Falls MT 59401

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

Bruce F. Fain
Murphy, Kirkpatrick & Fain, P.L.L.P.
208 North Broadway, Suite 208
P.O. Box 429
Billings, MT 59103-0429
bruce@murphkirk.com

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

Christopher P. Birkle
Lovell Law Firm, P.C.
175 North 27th Street, Suite 1206
P.O. Box 1415
Billings, MT 59101
cbirkle@lovellaw.com

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

James A. Patten
Suite 300, The Fratt Building
2817 2nd Avenue North
Billings, MT 50101
japatten@ppbglaw.com

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

Alan C. Bryan
490 North 31st Street, Suite 500
P.O. Box 2529
Billings, MT 59101
abryan@crowleylaw.com

☐ U.S. Mail, postage prepaid
☒ Electronic service
☐ Overnight Delivery

/s/ Shane P. Coleman

3631767_1.DOC